

REMARKS/ARGUMENTS

In the Office Action mailed April 21, 2010 (hereinafter, "Office Action"), claims 1, 3-4, 6-8, 10-11, 13-14 and 19 stand rejected under 35 U.S.C. § 103. Claims 5 and 12 stand objected to as being dependent upon a rejected claim, but would be allowable if rewritten in independent form.

Applicants respectfully respond to the Office Action.

I. Claims 1, 3-4, 6-8, 10-11, 13-14 and 19 Rejected Under 35 U.S.C. § 103

Claims 1, 3-4, 6-8, 10-11, 13-14 and 19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 7,437,654 to Das et al. (hereinafter, "Das") in view of U.S. Patent No. 7,170,866 to William C. Y. Lee et al. (hereinafter, "Lee-William") in view of U.S. Patent Application publication No. 2005/0058154 to Young Jo Lee et al. (hereinafter, "Lee-Young"). This rejection is respectfully traversed.

The factual inquiries that are relevant in the determination of obviousness are determining the scope and contents of the prior art, ascertaining the differences between the prior art and the claims in issue, resolving the level of ordinary skill in the art, and evaluating evidence of secondary consideration. KSR Int'l Co. v. Teleflex Inc., 550 U.S. 398, 406 (2007) (citing Graham v. John Deere Co. of Kansas City, 383 U.S. 1, 17-18 (1966)). As the Board of Patent Appeals and Interferences has recently confirmed, "obviousness requires a suggestion of all limitations in a claim." In re Wada and Murphy, Appeal 2007-3733 (citing CFMT, Inc. v. Yieldup Intern. Corp., 349 F.3d 1333, 1342 (Fed. Cir. 2003)). Moreover, the analysis in support of an obviousness rejection "should be made explicit." KSR, 2007 U.S. LEXIS 4745, at **37. "[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." Id. (citing In re Kahn, 441 F.3d 977, 988 (Fed. Cir. 2006)).

Applicants respectfully submit that Lee-Young, at least for the subject matter relied upon in the Office Action, does not constitute prior art relative to the present application. The present application was filed on July 14, 2003 and claims priority to two provisional applications, both of which were filed on January 21, 2003. The Lee-Young reference was filed on May 28, 2004, and is a continuation-in-part of an application filed on March 20, 2002 (U.S. App. No. 10/101,220

(hereinafter, the “CIP Parent”)) and also claims priority to a provisional application filed on October 30, 2003 (U.S. App. No. 60/515,381, (hereinafter, the “Provisional Parent”)) and three Korean applications (hereinafter, the “Korean Parent Applications”). First, the Korean Parent Applications, as foreign applications, do not form a basis for priority for Lee-Young in this scenario. (*See e.g.*, M.P.E.P. § 2136.03 (“Foreign applications’ filing dates that are claimed (via 35 U.S.C.119(a) - (d), (f) or 365(a)) in applications, which have been published as U.S. or WIPO application publications or patented in the U.S., may not be used as 35 U.S.C. 102(e) dates for prior art purposes.”).) Second, the Provisional Parent was filed *after* the present application and accordingly does not predate the present application. Finally, the CIP Parent does not include the paragraphs and figures of Lee-Young that is relied upon by the Office Action in making the rejection of the independent claims of the pending application. (Office Action, page 4.) Specifically, the Office Action relies on Figures 14-15 and 17 and paragraphs [0050] and [0286]-[0288] of the pending application. (*Id.*) The CIP Parent does not include Figures 14-15 and 17 of Lee-Young. The CIP parent includes Figures 2-13 of Lee-Young, but lacks the Figures 1 and 14-22 of the cited reference. Likewise, Applicants could not locate the text from paragraphs [0050] and [0286]-[0288] of Lee-Young within the CIP Parent. For example, paragraphs [0286]-[0288] describe Figure 14, which, as noted above, is not included in the CIP Parent. Accordingly, Applicants respectfully submit that Lee-Young, at least for the subject matter relied upon in the Office Action, does not constitute prior art relative to the present application and accordingly respectfully request withdrawal of this rejection.

Claim 1 recites “terminating transmission of the first subpacket of data after the second number of installments.” The Office Action conceded that Das and Lee-William do not teach this claim subject matter. (Office Action, page 4.) Lee-Young was relied on as teaching this subject matter. However, as shown above, Lee-Young is not prior art and, as a result, claim 1 is allowable over the cited references because neither Das nor Lee-William teach or suggest “terminating transmission of the first subpacket of data after the second number of installments.”

Applicants further note that claim 1 was previously amended to recite “determining power boost gain factors for the second number of installments using latency tolerance information.” As stated in the response submitted on August 31, 2009, Applicants have not been able to identify any portion of the cited references that discloses the verbiage or the concept of

use of “latency tolerance information” to determine power boost gain factors. The Office Action relies on Lee-William at the Abstract; col. 4, lines 1-6; and col. 4, lines 47-52 to teach this subject matter. (Office action, pages 5-6.) These excerpts of Lee-William, however, disclose adjustment of “transmit power for the re-transmission of the frame 300 . . . based on the BER [bit error rate] determined by the receiving station.” (Lee-William, col. 4, lines 47-50.) Applicants have not been able to identify any reference to or disclosure of a connection between determining boost gain factors and latency tolerance information (as opposed to the bit error rate) within the cited portion of Lee-William or within any other portion of this reference. Further, Applicants could not identify any discussion of latency tolerance information within Das. Applicants accordingly submit that the cited references fail to teach or suggest “determining power boost gain factors for the second number of installments using latency tolerance information.”

For at least the foregoing reasons, Applicants respectfully submit that amended claim 1 is allowable. Claims 3-4 and 6-7 depend from claim 1, and are therefore allowable for at least the same reasons as claim 1.

Claim 8 recites “means for terminating transmission of the first subpacket of data after the second number of installments” and “means for determining power boost gain factors for the second number of installments using the latency tolerance information.” As discussed above, Das, alone or in combination with Lee-William, does not teach or suggest this claimed subject matter. Accordingly, Applicants respectfully submit that claim 8 is allowable. Claims 10-11 and 13-14 depend directly from claim 8, and are therefore allowable for at least the same reasons.

Claim 19 recites “code for terminating transmission of the first subpacket of data after the second number of installments” and “code for determining power boost gain factors for the second number of installments using the latency tolerance information.” As discussed above, Das, alone or in combination with Lee-William, does not teach or suggest this claimed subject matter. Accordingly, Applicants respectfully submit that claim 19 is allowable.

II. Allowable Subject Matter

Applicants thank the Examiner for indicating that claims 5 and 12 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

CONCLUSION

In view of the foregoing, Applicants respectfully submit that all pending claims in the present application are in a condition for allowance, which is earnestly solicited. Should any issues remain unresolved, the Examiner is cordially invited to contact the undersigned at the number provided below.

Please charge any fees or overpayments that may be due with this response to Deposit Account No. **17-0026**.

Respectfully submitted,

Dated: September 17, 2010

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